



10/5/2016

To Whom It May Concern:

The Gallego and DCCC ads qualify as a candidate use and are therefore protected speech. Any further questions can be directed to myself or Kyle Osterhout at 703-272-7300.

Thanks,

Caroline Bahng

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October 5, 2016

Dear Station Manager:

I am counsel for Congressman Will Hurd and his authorized campaign committee, Hurd for Congress, and in that capacity request that you cease and desist from any further broadcast of a false and misleading advertisement against Congressman Hurd entitled “Wrong Choice for TX Families” (“the Advertisement”).

The Advertisement’s disclaimer indicates that it was sponsored by DCCC (formerly known as Democratic Congressional Campaign Committee), with the approval of Pete Gallego, Congressman Hurd’s opponent. Albeit approved by Mr. Gallego, the Advertisement apparently was placed and paid for by DCCC, and merits no special protection from your station’s obligation to broadcast only advertisements that are not false, misleading or deceptive.

As you know, a broadcaster cannot air an organization’s political advertisement that violates the “public trust” granted to you by your license, and you have a duty to protect the public from false, misleading or deceptive advertising. *Licensee Responsibility With Respect to the Broadcast of False, Misleading or Deceptive Advertising*, 74 F.C.C. 2nd 623 (1961). Failure to prevent the broadcast of false, misleading or deceptive advertising may be “probative of an underlying abdication of licensee responsibility” and grounds for loss of a station’s license. *Cosmopolitan Broad. Corp. v. FCC*, 581 F.2d 917, 927 (D.C. Cir. 1978).

The Advertisement is materially false because it selectively edited footage of televised remarks by Congressman Hurd in order to create an impression that he takes a certain policy position when, in fact, in those remarks, *he took the opposite position*. After criticizing presidential candidate Donald Trump for (among other things) his position favoring construction of a wall on the *entirety* of the 2,000-mile U.S.-Mexico border, the Advertisement alleges that “Will Hurd *shares the same* bad ideas,” and quoting Congressman Hurd as saying “a wall absolutely makes sense.”

As you can see for yourself here, <http://www.msnbc.com/morning-joe/watch/texas-congressman-refutes-trumps-wall-idea-520884291875>, where MSNBC has posted its footage of its interview with Congressman Hurd – which it titled, by the way, “*Texas congressman refutes*

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Trump's wall idea – Congressman Hurd does not “share the same bad ideas” as alleged by the Advertisement. Rather, Congressman Hurd *explicitly rejected* Trump's border wall proposal, as follows:

Joe Scarborough: “I want to start [the interview] with the wall. I want to start with Donald Trump. [Your district has] what, 800 miles....”

Congressman Hurd: “Over 800 miles.”

Joe Scarborough: “Of...bordering Mexico.”

Congressman Hurd: “Right.”

Joe Scarborough: “*So tell me what you think when you hear Donald Trump and other people talking about building a giant wall.*”

Congressman Hurd: “*You can't build a wall from sea to shining sea. It just doesn't work. It's the most expensive way to do border security and it's the least effective.* There's parts of a wall right now where the narco traffic context, the drug traffickers, have built ramps, and you put on top of the ballers that are protecting this wall and driven a ton truck, a one-ton truck over. What we need to do is, we need to make sure....”

Joe Scarborough: “They couldn't do that to Trump's wall, 'cause it'd be beautiful and....”

Congressman Hurd: “*What we need to do is, we need to allow the men and women in borders, in Border Patrol to adjust their tactics, techniques and procedures as they see fit. You can't have a one-size-fits-all solution in San Diego; it's not gonna necessarily work in Tucson, and you need something different in....*”

Joe Scarborough: “So why is it, though, the Republican candidates – remember, John McCain, you know, turns to the camera and goes, ‘Build the dang wall.’ Why do they all resort to that?”

Congressman Hurd: “Well, you need a wall in *some* places, right? *In heavily populated areas*, a wall absolutely makes sense. A wall is just one more tool in your toolkit, in order to solve a problem....”

As you can see, from this point forward the interview – and Congressman Hurd's statement of his position – then continues in this same vein, over the caption “**Rep. Hurd: No ‘One-Size-Fits-All Border Solution’**”. There simply is no credible argument that the Advertisement's claim against Congressman Hurd is truthful; what we have here is simply willful deceit by DCCC, to which your station should not be an accessory.

Now that your station has been informed that it is broadcasting a false and misleading advertisement, it has an obligation to remove it from broadcast. Your immediate corrective action is in both your interest and the public interest.

Sincerely,



Michael G. Adams